

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CEA 27/2019 (O&M)
Date of decision:04.10.2019.**

The Commissioner, Goods and Service Tax
Commissionerate, Ludhiana

.....Appellant

v.

Samrat Plywood Limited.

.....Respondent

**Coram: Hon'ble Mr.Justice Jaswant Singh
 Hon'ble Mr.Justice Lalit Batra**

Present:- Mr.Sunish Bindlish, Sr.Standing Counsel, Indirect
Taxation.

Jaswant Singh,J.

CM 6257-CII/2019.

Instant application has been filed for condonation of delay
of 2 days in refiling the instant appeal.

For the reasons stated in the application supported by the
affidavit of counsel for the appellant, CM is allowed and delay of 2
days being insignificant is condoned.

Main case.

Brief facts which are necessary for the adjudication of the
preset appeal are that respondent-Company is engaged in the
manufacturing of Plywood, Block Boards etc. On receipt of specific
information that respondent was engaged in evasion of Central
Excise Duty by resorting to undervaluation and clandestine removal
of goods, search was conducted at its business premises as well as

head office and a private office. During search records were resumed. Scrutiny of the resumed records revealed receipt of excess payment when compared to invoices during the period 2002-03, 2003-04 and 2004-05. Calculation charts of differential duty prepared on the basis of resumed record showed differential duty for the period 2002-03, 2003-04 and 2004-05 to the tune of Rs.13,27,928/-, Rs.46,50,531/- and Rs.43,43,153/- respectively totaling Rs.1,03,21,612/-. Further total short paid/not paid Central Excise duty amounting to Rs.4,13,16,786/- appeared to be recoverable from the respondent on account of clandestine sale of their final products. A show cause notice was issued. The Adjudicating Authority vide order dated 12.02.2009 (**A-2**) confirmed the duty demand of Rs.3,65,16,786/- under Section 11A of the Central Excise Tariff Act, 1985 (for short 1985 Act). Further, penalty of equal amount was imposed upon the respondent under Section 11AC of the Act. Penalties for various amounts were also imposed upon the Directors and Accountant of the respondent-company. Aggrieved against the same respondent filed an appeal before CESTAT which remanded the matter before the Adjudicating Authority. In compliance, Adjudicating Authority in denovo proceedings vide order dated 11.03.2013 (**A-3**) confirmed the demand of Rs.3,65,16,786/-. The penalties also remained unchanged. The respondent challenged the order A-3 before CESTAT which allowed the appeal vide order dated 22.3.2018 (**A-4**) with consequential relief, if any. Hence the present appeal raising the following substantial questions of law:-

1. Whether the impugned order of the Tribunal is liable to be set aside, the same having been passed in complete ignorance of the facts and evidence available on record?
2. Whether the charge of clandestine removal has to be proved with mathematical precision despite availability of sufficient prima facie evidence to establish the guilt of the noticee?
3. Whether the reliance placed by the Hon'ble Tribunal on the cases of Jindal Drugs Pvt. Ltd. And M/s Ambika International was justified in view of the fact that the judgments/orders passed in the said cases were recalled by this Hon'ble Court pursuant to Review Applications preferred by the department?
4. Whether the impugned order passed by the learned Tribunal is justified and in accordance with law.

Heard learned Counsel for the appellant.

At the very outset, learned Counsel for the appellant concedes that the issues raised in the present appeal have relation with the valuation of exciseable goods hence, in view of the bar contained in Section 35G and 35L (1)(b) of the Central Excise Act, 1944 the appeal would be maintainable before Hon'ble the Supreme Court and not before this Court. It is further not disputed that in case the material as referred to by him in the appeal is considered, the same will have relation with valuation of exciseable goods.

As undisputedly the issues raised in the present appeal have relation with the valuation of goods for the purpose of

assessment of duty, in our view the appeals filed in this Court will not be maintainable.

Accordingly, the present appeal is disposed of with liberty to the appellant to file an appeal under Section 35L of the Central Excise Act, 1944 before Hon'ble the Supreme Court.

(Jaswant Singh)
Judge

04.10.2019.
joshi

(Lalit Batra)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No